



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 05-95

May 23, 2006

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39, and G.L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2003 and/or 2004.

In the Matter Of

All-Star Acquisition Corporation	D.T.E. 05-95-1
Advent Communications, Inc. (formerly Ameritel Telephone Svcs.)	D.T.E. 05-95-2
Dark Air Corp.	D.T.E. 05-95-3
ECI Communications, Inc.	D.T.E. 05-95-4
Megan Corp.	D.T.E. 05-95-5
NeTel, Inc.	D.T.E. 05-95-6
Norstan Network Services, Inc.	D.T.E. 05-95-7
Tristate Bell of Mass, Inc.	D.T.E. 05-95-8
Worldnet Communications, Inc.	D.T.E. 05-95-9
Atlanta New York Warehouse Outlets, Inc.	D.T.E. 05-95-10
Communicate Technological Systems	D.T.E. 05-95-11
Communications Billing, Inc.	D.T.E. 05-95-12
Ntegrity Telecontent Services, Inc.	D.T.E. 05-95-13
Teleconex, Inc.	D.T.E. 05-95-14
Vista Group International, Inc.	D.T.E. 05-95-15

I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services (see G.L. c. 159, § 12(d)), must be registered by having an approved tariff on file with the Department as well as a current statement of business operations. G.L. c. 159, § 19; Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994). All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for each calendar year by March 31 of the following year “or such subsequent date as in any case, for good cause shown, the department may fix.” G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11; see, e.g., Annual Returns, D.T.E. 05-95, at 1, Vote and Order to Open Investigation (2006) (“Vote and Order”); Annual Returns, D.T.E. 03-76, at 1, Vote and Order to Open Investigation (2004); Annual Returns, D.T.E. 02-13, at 1, Vote and Order to Open Investigation (2002). Any common carrier that neglects to file the required annual return by the deadline set by the Department forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed. G.L. c. 166, § 12. Further, if the Department determines that a carrier “unreasonably refuses or neglects to make such return,” the carrier shall forfeit up to \$500 as an additional penalty. Id. If the Department finds that a common carrier has neglected to file its annual

return as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

A number of common carriers failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for calendar years 2003 and 2004. Although this Order pertains to several investigations of failure to file annual returns with nearly identical facts, the dockets are not consolidated, and thus the findings of fact and directives issued in this Order are applicable to each company, individually.

II. PROCEDURAL HISTORY

On March 22, 2006, the Department opened 15 separate investigations as follows:

(1) the failure by one common carrier to file an annual return and pay the statutory forfeiture to the Commonwealth for calendar year 2003; (2) the failure by eight common carriers to file annual returns and pay statutory forfeitures to the Commonwealth for calendar year 2004; and (3) the failure by six common carriers to file annual returns and pay statutory forfeitures to the Commonwealth for both calendar year 2003 and 2004. See Vote and Order at 4. In the Vote and Order, the Department determined that all of the 15 individually-named companies were registered during the relevant calendar year(s) to provide telecommunications services in the Commonwealth because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department further had these documents on file during the relevant calendar year(s). Id. at 1-2.

The Department docketed each investigation separately as follows:

Common Carrier Failing to File an Annual Return for 2003:

D.T.E. 05-95-1 - All-Star Acquisition Corporation

Common Carriers Failing to File Annual Returns for 2004:

D.T.E. 05-95-2 - Advent Communications, Inc. (formerly Ameritel Telephone Svcs.)

D.T.E. 05-95-3 - Dark Air Corp.

D.T.E. 05-95-4 - ECI Communications, Inc.

D.T.E. 05-95-5 - Megan Corp.

D.T.E. 05-95-6 - NeTel, Inc.

D.T.E. 05-95-7 - Norstan Network Services, Inc.

D.T.E. 05-95-8 - Tristate Bell of Mass, Inc.

D.T.E. 05-95-9 - Worldnet Communications, Inc.

Common Carriers Failing to File Annual Returns for 2003 and 2004:

D.T.E. 05-95-10 - Atlanta New York Warehouse Outlets, Inc.

D.T.E. 05-95-11 - Communicate Technological Systems

D.T.E. 05-95-12 - Communications Billing, Inc.

D.T.E. 05-95-13 - Ntegrity Telecontent Services, Inc.

D.T.E. 05-95-14 - Teleconex, Inc.

D.T.E. 05-95-15 - Vista Group International, Inc.

Pursuant to notice duly issued,¹ the Department held public and evidentiary hearings in each of these proceedings on April 27, 2006, at the Department's offices. No party entered an appearance or filed comments. The evidentiary records of the proceedings for the 15 common carriers contain a total of 85 exhibits.

¹ The Department sent a Notice of Hearing and Investigation ("Notice") to each of the companies on March 22, 2006, and published the Notice in the Boston Globe on April 6, 2006. The mailings to four companies were returned by the United States Postal Service ("USPS") with forwarding addresses as follows: Teleconex, Inc., was returned by the USPS on March 31, 2006; and Communications Billing, Inc., ECI Communications, Inc., and Vista Group International, Inc., were returned by the USPS on April 6, 2006. In each instance, the mailing was resent to each company at the address provided by the USPS on the date the returned mailing was received by the Department.

III. ANALYSIS AND FINDINGS

Each company that is the subject of this Order was a registered common carrier of telecommunications services during the relevant calendar year(s) because each company had an approved tariff and statement of business operations on file with the Department.

See D.P.U. 93-98, at 12. Therefore, each company was obligated to file an annual return for the relevant calendar year(s) pursuant to the General Laws. G.L. c. 159, § 32;

G.L. c. 166, § 11; Vote and Order at 1-2. Prior to commencing these investigations, the Department granted extensions, in both 2003 and 2004, for filing of annual returns past the March 31 annual deadline without incurring the statutory forfeiture. For 2003, the Department extended the filing deadline for annual returns to August 30, 2004, and notified by certified mail those telecommunications companies operating in the Commonwealth that had not yet filed annual returns. Vote and Order at 2. For 2004, the Department extended the filing deadline to September 16, 2005, and again notified the telecommunications companies by certified mail that had not yet filed annual returns. Id. The Department did not grant any additional extensions. To date, none of the common carriers that are the subject of this Order have filed the overdue annual returns.

The Department served the Notice upon the companies, advising each company that the Department was investigating the company's neglect to file annual returns and that failure to respond or to produce the information requested in the Notice would lead to adverse findings of fact and orders for corrective action. See id. at 2-3. None of these companies responded to the Notice.

Accordingly, the Department finds that each of these companies individually-named in this Order neglected to file its annual return for the relevant years(s) and that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12, applies to each company calculated from the extension dates. These forfeitures continue to accrue.

Further, the Department must consider whether each company's refusal or neglect to file was unreasonable. G.L. c. 166, § 12. Every common carrier that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. The individual companies named herein have provided no justification for the failure to file annual returns.

Moreover, in addition to failing to respond to the Notice of these investigations, or to appear at the public and evidentiary hearing, each company ignored or failed to respond to notices from the Department's Telecommunications Division reminding the company that it failed to file its annual return(s), and extending the deadline allowing it to do so without penalty (see, e.g., D.T.E. 05-95-1, Exhs. All-Star 4; All-Star 5; All-Star 6). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to comply with the Commonwealth's statutory requirements, the companies' failure to respond compounds those companies' neglect of their reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part

of each of the individually-named companies to file annual returns is unreasonable. Therefore, we conclude that both the continuing daily forfeiture, accrued from August 30, 2004, as well as the additional \$500 forfeiture, as provided in G.L. c. 166, § 12, are applicable to each company for failure to file a 2003 annual return; and the continuing daily forfeiture, accrued from September 16, 2005, and the additional \$500 forfeiture, are applicable to each company for failure to file a 2004 annual return.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that All-Star Acquisition Corporation shall immediately file an annual return for the calendar year 2003 and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED that Advent Communications, Inc. (formerly Ameritel Telephone Svcs.), Dark Air Corp., ECI Communications, Inc., Megan Corp., NeTel, Inc., Norstan Network Services, Inc., Tristate Bell of Mass, Inc., and Worldnet Communications, Inc., shall each immediately file an annual return for the calendar year 2004 and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED that Atlanta New York Warehouse Outlets, Inc., Communicate Technological Systems, Communications Billing, Inc., Ntegrity Telecontent Services, Inc., Teleconex, Inc., and Vista Group International, Inc., shall each immediately file annual returns

for the calendar years 2003 and 2004 and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED that the findings reached herein are applicable to All-Star Acquisition Corporation, individually, in docket D.T.E. 05-95-1; and it is

FURTHER ORDERED that the findings reached herein are applicable to Advent Communications, Inc. (formerly Ameritel Telephone Svcs.), individually, in docket D.T.E. 05-95-2; and it is

FURTHER ORDERED that the findings reached herein are applicable to Dark Air Corp., individually, in docket D.T.E. 05-95-3; and it is

FURTHER ORDERED that the findings reached herein are applicable to ECI Communications, Inc., individually, in docket D.T.E. 05-95-4; and it is

FURTHER ORDERED that the findings reached herein are applicable to Megan Corp., individually, in docket D.T.E. 05-95-5; and it is

FURTHER ORDERED that the findings reached herein are applicable to NeTel, Inc., individually, in docket D.T.E. 05-95-6; and it is

FURTHER ORDERED that the findings reached herein are applicable to Norstan Network Services, Inc., individually, in docket D.T.E. 05-95-7; and it is

FURTHER ORDERED that the findings reached herein are applicable to Tristate Bell of Mass, Inc., individually, in docket D.T.E. 05-95-8; and it is

FURTHER ORDERED that the findings reached herein are applicable to Worldnet Communications, Inc., individually, in docket D.T.E. 05-95-9; and it is

FURTHER ORDERED that the findings reached herein are applicable to Atlanta New York Warehouse Outlets, Inc., individually, in docket D.T.E. 05-95-10; and it is

FURTHER ORDERED that the findings reached herein are applicable to Communicate Technological Systems, individually, in docket D.T.E. 05-95-11; and it is

FURTHER ORDERED that the findings reached herein are applicable to Communications Billing, Inc., individually, in docket D.T.E. 05-95-12; and it is

FURTHER ORDERED that the findings reached herein are applicable to Ntegrity Telecontent Services, Inc., individually, in docket D.T.E. 05-95-13; and it is

FURTHER ORDERED that the findings reached herein are applicable to Teleconex, Inc., individually, in docket D.T.E. 05-95-14; and it is

FURTHER ORDERED that the findings reached herein are applicable to Vista Group International, Inc., individually, in docket D.T.E. 05-95-15; and it is

FURTHER ORDERED that the findings of fact and directives herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Paul G. Afonso, Commissioner

/s/
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court.

G.L. c. 25, § 5.